

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RUSSELL MARTIN,

Plaintiff,

v.

M. S. EVANS, *et al.*,

Defendants.

Case No. C 08-4067 JW MEJ

**[PROPOSED] STIPULATED PROTECTIVE
ORDER GOVERNING TREATMENT OF
CONFIDENTIAL INFORMATION AND
DOCUMENTS**

Pursuant to the Discovery Order entered by the Court (Magistrate Judge James) on May 23, 2012 [Dkt No. 99] and Rule 26(c) of the Federal Rules of Civil Procedure, Plaintiff Russell R. Martin and Defendant D. Beatty (collectively, the “Parties”) hereby stipulate to entry of the following protective order. Defendant Beatty’s stipulation to this protective order is premised on the Court’s rejection, through its May 23 Discovery Order, of his and non-party Salinas Valley State Prison’s objections to the three provisions identified in the Parties’ joint Letter Regarding Discovery Dispute filed on March 9, 2012 [Dkt No. 84]. Defendant Beatty intends to preserve those objections, notwithstanding his stipulation to this protective order. Accordingly, the Parties hereby STIPULATE to, and respectfully request that the Court ENTER, the following protective order.

I. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential and/or private information for which special protection from public disclosure and from use for any

1 purpose other than prosecuting this litigation may be warranted. Accordingly, the Parties, by and
 2 through their respective counsel, and subject to Defendant Beatty's preservation of his objections to
 3 certain provisions as noted above, hereby petition the Court to enter the following Protective Order.
 4 The Parties acknowledge that this Order does not confer blanket protections on all disclosures or
 5 responses to discovery and that the protection it affords from public disclosure and use extends only
 6 to the limited information or items that are entitled to confidential treatment under the applicable
 7 legal principles. The Parties further acknowledge, as set forth in Section XII.C., below, that this
 8 Protective Order does not entitle any party to file confidential information under seal; Civil Local
 9 Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when
 10 a party seeks permission from the court to file material under seal.

11 **II. DEFINITIONS**

12 **A. Challenging Party:** a Party or Non-Party that challenges the designation of
 13 information or items under this Order.

14 **B. "CONFIDENTIAL" Information or Items:** information (regardless of how it is
 15 generated, stored or maintained) or tangible things that qualify for protection under federal law.

16 **C. Counsel or Counsel of Record:** attorneys who are retained to represent or advise a
 17 Party to this action and have appeared in this action on behalf of that party or are affiliated with a law
 18 firm which has appeared on behalf of that party, as well as their support staff.

19 **D. Designating Party:** a Party or Non-Party that designates information or items that it
 20 produces in disclosures or in responses to discovery as "CONFIDENTIAL" or "HIGHLY
 21 CONFIDENTIAL – ATTORNEYS' EYES ONLY."

22 **E. Disclosure or Discovery Material:** all items or information, regardless of the medium
 23 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
 24 transcripts, and tangible things), that are produced or generated in disclosures or responses to
 25 discovery in this matter.

26 **F. Expert:** a person with specialized knowledge or experience in a matter pertinent to the
 27 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
 28 consultant in this action.

1 **G. “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or**

2 **Items:** all documents that a Designating Party in good faith believes contain confidential or personal
3 information, or an individual’s private information that is not publicly known and cannot be
4 ascertained from an inspection of publicly-available documents, and whose disclosure to a Receiving
5 Party or non-party would create a substantial risk of injury to the Designating Party, Producing Party,
6 or persons identified in the materials (including but not limited to impacting prison safety and
7 security) that could not be avoided by less restrictive means..

8 **H. Non-Party:** any natural person, partnership, corporation, association, or other legal

9 entity not named as a Party to this action.

10 **I. Party:** any Party to this action, including all of its consultants, retained experts, and

11 Counsel of Record (and their support staffs).

12 **J. Producing Party:** a Party or Non-Party that produces Disclosure or Discovery

13 Material in this action.

14 **K. Professional Vendors:** persons or entities that provide litigation support services

15 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
16 storing, or retrieving data in any form or medium) and their employees and subcontractors.

17 **L. Protected Material:** any Disclosure or Discovery Material that is designated as

18 “CONFIDENTIAL,” or as HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

19 **M. Receiving Party:** a Party that receives Disclosure or Discovery Material from a

20 Producing Party.

21 **III. SCOPE**

22 The protections conferred by this Protective Order cover not only Protected Material (as
23 defined above), but also (1) any information copied or extracted from Protected Material; (2) all
24 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
25 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

26 However, the protections conferred by this Protective Order do not cover the following information:

27 (a) any information that is in the public domain at the time of disclosure to a Receiving Party or
28 becomes part of the public domain after its disclosure to a Receiving Party as a result of publication

1 not involving a violation of this Order, including becoming part of the public record through trial or
 2 otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained
 3 by the Receiving Party after the disclosure from a source who obtained the information lawfully and
 4 under no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial
 5 shall be governed by a separate agreement or order.

6 **IV. DURATION**

7 Even after final disposition of this litigation, the confidentiality obligations imposed by this
 8 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
 9 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
 10 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
 11 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time
 12 limits for filing any motions or applications for extension of time pursuant to applicable law.

13 **V. DESIGNATING PROTECTED MATERIAL**

14 **A. Exercise of Restraint and Care in Designating Material for Protection.** Each
 15 Party or Non-Party that designates information or items for protection under this Order must take care
 16 to limit any such designation to specific material that qualifies under the appropriate standards. To
 17 the extent it is practical to do so, the Designating Party must designate for protection only those parts
 18 of material, documents, items, or oral or written communications that qualify – so that other portions
 19 of the material, documents, items, or communications for which protection is not warranted are not
 20 swept unjustifiably within the ambit of this Order.

21 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
 22 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
 23 encumber or retard the case development process or to impose unnecessary expenses and burdens on
 24 other parties) expose the Designating Party to sanctions.

25 If it comes to a Designating Party's attention that information or items that it designated for
 26 protection do not qualify for protection at all or do not qualify for the level of protection initially
 27 asserted, that Designating Party must promptly notify all other parties that it is withdrawing the
 28 mistaken designation.

1 **B. Manner and Timing of Designations.** Except as otherwise provided in this Order
 2 (see, *e.g.*, subsection V.C. below), or as otherwise stipulated or ordered, Disclosure or Discovery
 3 Material that qualifies for protection under this Order must be clearly so designated before the
 4 material is disclosed or produced.

5 Designation in conformity with this Order requires:

6 1. for information in documentary form (*e.g.*, paper or electronic documents, but
 7 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
 8 affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 9 ONLY” to each page that contains protected material. If only a portion or portions of the material on
 10 a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s)
 11 (*e.g.*, by making appropriate markings in the margins) and must specify, for each portion, the level of
 12 protection being asserted.

13 A Party or Non-Party that makes original documents or materials available for inspection
 14 need not designate them for protection until after the inspecting Party has indicated which material it
 15 would like copied and produced. During the inspection and before the designation all of the material
 16 made available for inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 17 ONLY.” After the inspecting Party has identified the documents it wants copied and produced, the
 18 Producing Party must determine which documents, or portions thereof, qualify for protection under
 19 this Order. Then, before producing the specified documents, the Producing Party must affix the
 20 appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 21 ONLY”) to each page that contains Protected Material. If only a portion or portions of the material on
 22 a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s)
 23 (*e.g.*, by making appropriate markings in the margins) and must specify, for each portion, the level of
 24 protection being asserted.

25 2. For testimony given in deposition or in other pretrial or trial proceedings, that the
 26 Designating Party identify on the record, before the close of the deposition, hearing, or other
 27 proceeding, all protected testimony and specify the level of protection being asserted. When it is
 28 impractical to identify separately each portion of testimony that is entitled to protection and it appears

1 that substantial portions of the testimony may qualify for protection, the Designating Party may
2 invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right to have
3 up to 21 days to identify the specific portions of the testimony as to which protection is sought and to
4 specify the level of protection being asserted. Only those portions of the testimony that are
5 appropriately designated for protection within the 21 days shall be covered by the provisions of this
6 Protective Order. Alternatively, a Designating Party may specify, at the deposition or up to 21 days
7 afterwards if that period is properly invoked, that the entire transcript shall be treated as
8 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

9 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or
10 other proceeding to include Protected Material so that the other parties can ensure that only
11 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
12 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
13 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
14 ATTORNEYS’ EYES ONLY.”

15 Transcripts containing Protected Material shall have an obvious legend on the title page that
16 the transcript contains Protected Material, and the title page shall be followed by a list of all pages
17 (including line numbers as appropriate) that have been designated as Protected Material and the level
18 of protection being asserted by the Designating Party. The Designating Party shall inform the court
19 reporter of these requirements. Any transcript that is prepared before the expiration of a 21-day
20 period for designation shall be treated during that period as if it had been designated “HIGHLY
21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the
22 expiration of that period, the transcript shall be treated only as actually designated.

23 3. For information produced in some form other than documentary and for any other
24 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or
25 containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY
26 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of the information
27 or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected
28 portion(s) and specify the level of protection being asserted.

1 **C. Inadvertent Failures to Designate.** If timely corrected, an inadvertent failure to
 2 designate qualified information or items does not, standing alone, waive the Designating Party's right
 3 to secure protection under this Order for such material. Upon timely correction of a designation, the
 4 Receiving Party must make reasonable efforts to assure that the material is treated in accordance with
 5 the provisions of this Order.

6 **VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

7 **A. Timing of Challenges.** Any Party or Non-Party may challenge a designation of
 8 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
 9 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
 10 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
 11 confidentiality designation by electing not to mount a challenge promptly after the original
 12 designation is disclosed.

13 **B. Meet and Confer.** The Challenging Party shall initiate the dispute resolution process
 14 by providing written notice (by email or facsimile and regular mail) of each designation it is
 15 challenging and describing the basis for each challenge. To avoid ambiguity as to whether a
 16 challenge has been made, the written notice must recite that the challenge to confidentiality is being
 17 made in accordance with this specific paragraph of the Protective Order. The parties shall attempt to
 18 resolve each challenge in good faith and must begin the process by conferring directly (in voice to
 19 voice dialogue; other forms of communication are not sufficient) within 14 days of the date of service
 20 of notice. In conferring, the Challenging Party must explain the basis for its belief that the
 21 confidentiality designation was not proper and must give the Designating Party an opportunity to
 22 review the designated material, to reconsider the circumstances, and, if no change in designation is
 23 offered, to explain the basis for the chosen designation. A Challenging Party may proceed to the next
 24 stage of the challenge process only if it has engaged in this meet and confer process first or
 25 establishes that the Designating Party is unwilling to participate in the meet and confer process in a
 26 timely manner.

27 **C. Judicial Intervention.** If the Parties cannot resolve a challenge without court
 28 intervention, the Challenging Party may file and serve a motion challenging confidentiality

1 designation(s) under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)
 2 at any time if there is good cause for doing so, including a challenge to the designation of a
 3 deposition transcript or any portions thereof. Any motion brought pursuant to this provision must be
 4 accompanied by a competent declaration affirming that the movant has complied with the meet and
 5 confer requirements imposed by the preceding paragraph.

6 The burden of persuasion in any such challenge proceeding shall be on the designating party.
 7 Frivolous challenges and those made for an improper purpose (e.g., to harass or impose unnecessary
 8 expenses and burdens on other parties) may expose the Challenging Party to sanctions. All parties
 9 shall continue to afford the material in question the level of protection to which it is entitled under the
 10 Producing Party's designation until the court rules on the challenge.

11 **VII. ACCESS TO AND USE OF PROTECTED MATERIAL**

12 **A. Basic Principles.** A Receiving Party may use Protected Material that is disclosed or
 13 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
 14 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
 15 the categories of persons and under the conditions described in this Order. When the litigation has
 16 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
 17 DISPOSITION).

18 Protected Material must be stored and maintained by a Receiving Party at a location and in a
 19 secure manner that ensures that access is limited to the persons authorized under this Order.

20 **B. Disclosure of “CONFIDENTIAL” Information or Items.** Unless otherwise ordered
 21 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
 22 information or item designated “CONFIDENTIAL” only to:

- 23 1. The Receiving Party;
- 24 2. The Receiving Party's Counsel of Record in this action;
- 25 3. Experts (as defined in this Order) of the Receiving Party to whom disclosure is
 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to
 Be Bound” (Exhibit A);
- 26 4. The Court and its personnel;

1 5. Court reporters and their staff, professional jury or trial consultants or mock jurors,
 2 and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
 3 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 6. During their depositions, witnesses in the action (excluding inmates and parolees) to
 5 whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement
 6 to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court;
 7 provided that the pages of transcribed deposition testimony or exhibits to depositions that reveal
 8 Protected Material must be separately bound by the court reporter and may not be disclosed to
 9 anyone except as permitted under this Protective Order;

10 7. The author or recipient of a document containing the information or a custodian or
 11 other person who otherwise possessed or knew the information.

12 **C. Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”**

13 **Information or Items.** Unless otherwise ordered by the court or permitted in writing by the
 14 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
 15 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

16 1. The Receiving Party’s Counsel of Record;
 17 2. Experts (as defined in this Order) of the Receiving Party (1) to whom disclosure is
 18 reasonably necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to
 19 Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in Section VII.D., below, have
 20 been followed;

21 3. The Court and its personnel;
 22 4. Court reporters and their staff, professional jury or trial consultants or mock jurors,
 23 and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
 24 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

25 5. The author or recipient of a document containing the information or a custodian or
 26 other person who otherwise possessed or knew the information.

1 **D. Procedures for Approving or Objecting to Disclosure of “HIGHLY**
 2 **CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Designated House**
 3 **Counsel or Experts.**

4 1. Unless otherwise ordered by the court or agreed to in writing by the Designating Party,
 5 a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has
 6 been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to Section
 7 VII.C.2. first must make a written request (by email or facsimile and regular mail) to the Designating
 8 Party that (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’
 9 EYES ONLY” information that the Receiving Party seeks permission to disclose to the Expert,
 10 (2) sets forth the full name of the Expert and the city and state of his or her primary residence,
 11 (3) attaches a copy of the Expert’s current resume, and (4) identifies the Expert’s current employer(s).

12 2. A Party that makes a request and provides the information specified in the preceding
 13 respective paragraphs may disclose the subject Protected Material to the identified Expert unless,
 14 within 7 days of service of the request, the Party receives a written objection (by email or facsimile
 15 and regular mail) from the Designating Party. Any such objection must set forth in detail the grounds
 16 on which it is based.

17 3. A Party that receives a timely written objection must meet and confer with the
 18 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement
 19 within 7 days of the written objection. If no agreement is reached, the Designating Party objecting to
 20 the disclosure to the Expert must file a motion as provided in Civil Local Rule 7 (and in compliance
 21 with Civil Local Rule 79-5, if applicable) seeking an order prohibiting the requested disclosure. Any
 22 such motion must describe the circumstances with specificity, set forth in detail the reasons why
 23 prohibiting disclosure to the Expert is reasonably necessary, assess the risk of harm that the
 24 disclosure would entail, and suggest any additional means that could be used to reduce that risk while
 25 still permitting disclosure. In addition, any such motion must be accompanied by a competent
 26 declaration describing the parties’ efforts to resolve the matter by agreement (i.e., the extent and the
 27 content of the meet and confer discussions) and setting forth the reasons advanced by the Designating
 28 Party for its refusal to approve the disclosure.

1 Any such motion must be filed within 7 days following the unsuccessful "meet and confer"
2 dialogue or within 14 days following the service of the Designating Party's written objection,
3 whichever is earlier. Failure to file a motion within the applicable time period waives the
4 Designating Party's objection to the requested disclosure, permitting the Receiving Party to make
5 such disclosure to the Expert on the 8th day following the unsuccessful "meet and confer" dialogue
6 or the 15th day following the service of the written objection, whichever is earlier.

7 **VIII. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
8 LITIGATION**

9 If a Party is served with a subpoena or a court order issued in other litigation that compels
10 disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY
11 CONFIDENTIAL – ATTORNEYS' EYES ONLY," that Party must:

12 1. Promptly notify in writing (by email or facsimile and regular mail) the Designating
13 Party's Counsel of Record. Such notification shall include a copy of the subpoena or court order;

14 2. Promptly notify in writing the party who caused the subpoena or order to issue in the
15 other litigation that some or all of the material covered by the subpoena or order is subject to this
16 Protective Order. Such notification shall include a copy of this Protective Order; and

17 3. Cooperate with respect to all reasonable procedures sought to be pursued by the
18 Designating Party whose Protected Material may be affected.

19 If the Designating Party timely seeks a protective order, the Party served with the subpoena or
20 court order shall not produce any information designated in this action as "CONFIDENTIAL" or
21 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" before a determination by the court
22 from which the subpoena or order issued, unless the Party has obtained the Designating Party's
23 permission. The Designating Party shall bear the burden and expense of seeking protection in that
24 court of its confidential material – and nothing in these provisions should be construed as authorizing
25 or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

1 **IX. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
2 **THIS LITIGATION**

3 **A. Applicability of this Order to Non-Parties.** The terms of this Order are applicable to
4 information produced by a Non-Party in this action and designated as "CONFIDENTIAL" or
5 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." Such information produced by Non-
6 Parties in connection with this litigation is protected by the remedies and relief provided by this
7 Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
8 additional protections.

9 **B. Request for Production of Non-Party's Confidential Information.** In the event
10 that a Party is required, by a valid discovery request, to produce a Non-Party's confidential
11 information in its possession, and the Party is subject to an agreement with the Non-Party not to
12 produce the Non-Party's confidential information, then the Party shall:

13 1. Promptly notify in writing the Requesting Party and the Non-Party that some or all of
14 the information requested is subject to a confidentiality agreement with a Non-Party;

15 2. Promptly provide the Non-Party with a copy of the Protective Order in this litigation,
16 the relevant discovery request(s), and a reasonably specific description of the information requested;
17 and

18 3. Concurrently make the information requested available for inspection by the Non-
19 Party.

20 **C. Effect of Non-Party's Failure to Seek Protective Order.** If the Non-Party fails to
21 seek a protective order from this court within 14 days of receiving the notice and accompanying
22 information, the Receiving Party must produce the Non-Party's confidential information responsive
23 to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall
24 not produce any information in its possession or control that is subject to the confidentiality
25 agreement with the Non-Party before a determination by the Court. Absent a court order to the
26 contrary, the Non-Party shall bear the burden and expense of seeking protection in this Court of its
27 Protected Material.

1 **X. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
3 Material to any person or in any circumstance not authorized under this Protective Order, the
4 Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
5 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)
6 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
7 Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be
8 Bound" that is attached hereto as Exhibit A.

9 **XI. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
10 MATERIAL**

11 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced
12 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties
13 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to
14 modify whatever procedure may be established in an e-discovery order that provides for production
15 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
16 parties reach an agreement on the effect of disclosure of a communication or information covered by
17 the attorney-client privilege or work product protection, the parties may incorporate their agreement
18 in the stipulated protective order submitted to the court.

19 **XII. MISCELLANEOUS**

20 **A. Right to Further Relief.** Nothing in this Order abridges the right of any person to
21 seek its modification by the court in the future.

22 **B. Right to Assert Other Objections.** No Party waives any right it otherwise would
23 have to object to disclosing or producing any information or item on any ground not addressed in this
24 Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of
25 any of the material covered by this Protective Order.

26 **C. Filing Protected Material.** Without written permission from the Designating Party or
27 a court order secured after appropriate notice to all interested persons, a Party may not file in the
28 public record in this action any Protected Material. A Party that seeks to file under seal any Protected

1 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal
2 pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant
3 to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the Protected
4 Material at issue is privileged or otherwise entitled to protection under the law. If a Receiving
5 Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is denied by
6 the court, then the Receiving Party may file the Protected Material in the public record pursuant to
7 Civil Local Rule 79-5(e) unless otherwise instructed by the court.

8 **XIII. FINAL DISPOSITION**

9 Within 60 days after the final disposition of this action, as defined in Section IV, each
10 Receiving Party must return all Protected Material to the Producing Party or destroy such material, at
11 the option of the Producing Party. As used in this Section, "all Protected Material" includes all
12 copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the
13 Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party
14 must submit a written certification to the Producing Party (and, if not the same person or entity, to the
15 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the
16 Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not
17 retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing
18 any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
19 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
20 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and
21 consultant and expert work product, even if such materials contain Protected Material. Any such
22 archival copies that contain or constitute Protected Material remain subject to this Protective Order as
23 set forth in Section IV.

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26 ///

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1 IT IS SO STIPULATED.

2 Dated: May 31, 2012

NIXON PEABODY LLP

4 By: /s/ Matthew J. Frankel

5 Attorneys for Plaintiff
6 RUSSELL MARTIN

7 Dated: May 31, 2012

KAMALA D. HARRIS
8 ATTORNEY GENERAL OF CALIFORNIA
Thomas S. Patterson
9 Supervising Deputy Attorney General

10 By: /s/ Jose Zelidon-Zepeda
11 Deputy Attorney General

12 Attorneys for Defendant
13 DARREN BEATTY

14 GENERAL ORDER 45 SUBSECTION (X)(B) ATTESTATION

15 I hereby attest that concurrence in the filing of the document has been obtained from Jose
16 Zelidon-Zepeda.

17 /s/ Matthew J. Frankel

20 PURSUANT TO STIPULATION AND GOOD CAUSE APPEARING, IT IS SO ORDERED.

22 DATED: 5/6/2012

23 Maria-Elena James
Chief United States Magistrate Judge



EXHIBIT "A" TO PROTECTIVE ORDER

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Protective Order that was issued by the United States District Court for the Northern District of California on _____, 2012 in the case of *Martin v. Evans et al.*, Case No. C 08-4067 JW. I agree to comply with and to be bound by all the terms of this Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone
number] as my California agent for service of process in connection with this action or any
proceedings related to enforcement of this Protective Order.

Date:

City and State where sworn and signed:

Printed name:

[printed name]

Signature: _____

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